



Billing Code 3410-DM-P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket Number FSIS-2018-0012]

RIN 0583-AD71

Rescission of Dual Labeling Requirements for Certain Packages of Meat and Poultry

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend its labeling regulations to remove provisions that require packages of meat or poultry products that contain at least one pound or one pint, but less than four pounds or one gallon, to express the net weight or net contents in two different units of measurement on the product label. FSIS is taking this action in response to a petition submitted on behalf of a small meat processing establishment. After reviewing these provisions, FSIS has determined that it is not necessary for labels of any meat or poultry products to bear dual statements of weight or content, using more than one unit of measurement, to convey the accurate weight or amount of the product to consumers.

DATES: Comments must be received on or before **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: FSIS invites interested persons to submit comments on the proposed rule. Comments may be submitted by one of the following methods:

- **Federal eRulemaking Portal:** This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to <http://www.regulations.gov>. Follow the on-line instructions at that site for submitting comments.

- **Mail, including CD-ROMs, etc.:** Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Room 6065, Washington, DC 20250-3700.

- **Hand- or courier-delivered submittals:** Deliver to 1400 Independence Avenue SW, Room 6065, Washington, DC 20250-3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS-2018-0012. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <http://www.regulations.gov>.

Docket: For access to background documents or comments received, call (202) 720-5627 to schedule a time to visit the

FSIS Docket Room at 1400 Independence Avenue SW, Room 6065,
Washington, DC 20250-3700.

FOR FURTHER INFORMATION CONTACT: Rosalyn Murphy-Jenkins,
Director, Labeling and Program Delivery Division, Office of
Policy and Program Development; Telephone: (301) 504-0878, Fax:
(202) 245-4795

SUPPLEMENTARY INFORMATION:

Background

FSIS is the public health regulatory agency in the USDA that is responsible for ensuring that the nation's commercial supply of meat, poultry, and egg products is safe, wholesome, and accurately labeled and packaged. FSIS develops and implements regulations and policies to ensure that meat, poultry, and egg product labeling is not false or misleading.

Regulatory Reform

On February 24, 2017, President Trump signed Executive Order (E.O.) 13777, "Enforcing the Regulatory Reform Agenda." Section 3(a) of the E.O. directs Federal agencies to establish a Regulatory Reform Task Force (Task Force). One of the duties of the USDA Task Force is to evaluate existing regulations and make recommendations to the Secretary of Agriculture for their repeal, replacement, or modification.

To help the Task Force conduct their evaluation, the USDA published a proposed rule in the **Federal Register** (82 FR 32649,

July 17, 2017) requesting ideas from the public on how the Department can provide better customer service and remove unintended barriers to participation in USDA programs. In response to the proposed rule, FSIS received a petition submitted on behalf of a small meat processing establishment requesting that FSIS rescind regulations (9 CFR 317.2(h)(5) and 381.121(c)(5)) that require packages of meat and poultry products that contain at least one pound or pint, but less than four pounds or one gallon, to express the net weight or net contents as a "dual declaration" on the product label.

Specifically, under the regulations at 9 CFR 317.2(h)(5) and 381.121(c)(5), dual declaration is required to express the net weight in ounces and immediately thereafter in parentheses in pounds, with any remainder in terms of ounces or common or decimal fraction of the pound (e.g., "Net Wt. 24 oz. (1 lb. 8 oz.), "Net Wt. 24 oz. (1.5 lbs.)" or "Net Wt. 24 oz. (1 ½ lb.)"). For liquid measure, dual declaration is required to be expressed as the net content in fluid ounces and immediately thereafter in parentheses the largest whole U.S. customary unit (e.g., pints or, quarts, with any remainder expressed in terms of fluid ounces or common or decimal fraction of the pint or quart (e.g., "Net contents 32 FL OZ (1 QT)" or "Net contents 30 FL OZ (1 pint 14 FL OZ)"). Packages of products that contain less than one pound or pint or that contain four pounds or one

gallon or more are not subject to the "dual declaration" and may express the product's net weight or net content as a single, accurate statement.

The petition stated that FSIS should eliminate the dual declaration requirements because meat and poultry products do not need to be labeled with dual statements of weight or content, using different units of measurement, to convey accurate weight or amount information to consumers. In addition, the petition stated that the labeling equipment needed to print labels with dual net weight statements can be more expensive than the equipment used to print labels with single net weight statements. According to the petition, the costs associated with the dual declaration labeling requirements may be stifling competition and limiting the ability of start-up and small producers to compete with large producers. The petition is available on FSIS's Web site at <https://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/petitions>.

Proposed Rule

After reviewing the dual declaration labeling requirements, FSIS has determined that the corresponding sections in the regulations are unnecessary. FSIS is proposing to eliminate all of the provisions in 9 CFR 317.2(h) and 381.121(c) that require or cross-reference dual net weight or content statements.

Package labeling of meat or poultry products in amounts subject to the current requirements do not need dual statements of weight or content, using different units of measurement, to convey accurate weight or amount information to consumers. If this proposed rule becomes final, establishments that produce meat and poultry products in packages containing 1 pound or 1 pint and less than 4 pounds or one gallon will be required to only express the weight or contents in one unit of measurement on the product label (e.g., "Net Wt. 24 oz." or "Net Wt. 1.5 lbs.", rather than "Net Wt. 24 oz. (1.5 lbs.)"). Establishments will be allowed to use their current labels until they run out, or may elect to use them indefinitely, as a matter of choice.

FSIS did not find that the labeling equipment needed to print labels with dual net weight or content statements is more expensive than the equipment used to print labels with single net weight or content statements. FSIS is requesting comments on the costs associated with printing the dual declaration on labels.

Executive Orders 12866 and 13563, and the Regulatory Flexibility Act

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,

environmental, public health and safety benefits, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated as a “non-significant” regulatory action under section 3(f) of E.O. 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB) under E.O. 12866.

Economic Impact Analysis

Baseline

Currently, packages of meat or poultry products that contain at least one pound or one pint, but less than four pounds or one gallon, are required to express the net weight or content as a “dual declaration” (i.e., in both ounces and pounds or fluid ounces and pints, or quarts) on the product label, unless an exemption¹ applies. According to 2015 Information Resources, Inc., (IRI) scanner data², about 31,679 FSIS regulated products in the retail market have a dual net weight or content statement on the label. About 62 percent (2,594/4,184) of FSIS regulated companies manufacture at least one product with a dual net weight or content statement, and over 35 percent

¹ See 9 CFR 317.2(h)(9) and 381.121(h)(9) for the list of exemptions.

² IRI gathers data by scanners in supermarkets, drugstores, and mass merchandisers and maintains a panel of consumer households that record purchases at outlets by scanning UPC codes on the products purchased.

(1,500/4,184) of FSIS regulated companies manufacture products with both a dual and single net weight or content statement.

Expected Cost Savings and Benefits Associated with the Proposed Rule

The proposed amendments to 9 CFR 317.2(h) (5) and 9 CFR 381.121(c) (5) remove the requirements for dual net weight or content statements on labels of meat and poultry products that contain at least one pound or one pint, but less than four pounds or one gallon. Under the proposed rule, all FSIS meat and poultry products would need to include only one unit of measurement in the net weight or content statement. Industry would benefit from consistent and more flexible net weight and content statement regulations across all FSIS meat and poultry products, especially start-up companies and companies with products having both single and dual net weight or content statements. Companies would no longer have to keep track of which products need to include a dual or single net weight or content declaration.

The proposed changes would also clarify the net weight and content requirements for the industry and FSIS inspectors. When FSIS analyzed historical askFSIS³ data, it showed confusion surrounding the dual declaration net weight and content

³ askFSIS is a web-based computer application, designed to help answer technical and policy-related questions from inspection program personnel, industry, consumer groups, other stakeholders, and the public.

requirements. Industry often incorrectly interpreted the dual declaration net weight and content requirements as needing to include both the avoirdupois measure (ounces or pounds) and the metric measure (grams or kilograms) in the net weight or content statement. FSIS also received askFSIS questions about exemptions. For example, industry wanted to know if random weight packages, packages under one pound, and products sold for further processing were exempt from the dual declaration net weight and content requirements. The remaining questions sought formatting clarification on the order of the measurements and about the line spacing. Questions regarding the order sought clarification on which measurements should be listed first: pounds or ounces, fluid ounces or pints or quarts. Industry also asked if the second net weight or content declaration could be listed on a separate line to better fit on labels. If the proposed changes are finalized, FSIS expects the net weight and content requirements will be clearer and there will be fewer askFSIS questions and less misunderstanding of the net weight and content requirements.

Further, the likelihood of misprinted labels should decrease under the proposed rule. FSIS's Labeling and Program Delivery Staff (LPDS) evaluates sketches of labels⁴ through the

⁴ LPDS evaluates four types of FSIS labels; (1) Labels for religious exempt products, (2) Labels for export with deviations from domestic requirements,

Label Submission and Approval System (LSAS) prior to the associated labels entering the marketplace. According to 2017 LSAS data, LPDS approved twelve labels from eight firms contingent on correction of errors in the dual net weight statement. These labels would not have needed modifications to their net weight statement under the proposed changes.

In addition, removing the dual declaration requirements would free-up a small amount of space on the principal display panel of labels. Switching from dual declarations to single declarations could also marginally decrease ink consumption for companies.

FSIS did not find a price difference in capital printing equipment for complying with the dual declaration net weight or content statement. However, there is a price difference in scale-printing systems for printing a dual net weight or content statement versus a single statement. Companies typically use scale-printing systems to print net weight information on random weight packages (e.g., sliced turkey from a deli counter). Random weight packages with varying weight and with no fixed weight pattern are currently exempt from the dual declaration

(3) Labels with special statements and claims, and (4) Labels for temporary approval. All other labels can be generically approved. Additional information on generically approved labels is available here: <https://www.fsis.usda.gov/wps/wcm/connect/bf170761-33e3-4a2d-8f86-940c2698e2c5/Label-Approval-Guide.pdf?MOD=AJPERES/>.

net weight and content statement requirement. Therefore, the scale-printer cost discrepancies were not included in the cost analysis. FSIS seeks comment on capital costs for printing equipment for the dual declaration net weight and content statement.

Expected Costs Associated with the Proposed Rule

There are no expected costs associated with this proposed rule. Companies that already have products labeled with the two measurements in the net weight or contents statement are not required to update their labels to a single net weight or contents statement.

Regulatory Flexibility Act Assessment

The FSIS Administrator has made a preliminary determination that this proposed rule would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The proposed rule is not expected to increase costs to the industry.

Executive Order 13771

Consistent with E.O. 13771 (82 FR 9339, February 3, 2017), FSIS has estimated that this proposed rule would yield qualitative cost savings. Therefore, if finalized as proposed, this rule is expected to be an E.O. 13771 deregulatory action.

Paperwork Reduction Act

There are no new paperwork or recordkeeping requirements associated with this proposed rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under E.O. 12988, Civil Justice Reform. Under this rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no administrative proceedings will be required before parties may file suit in court challenging this rule.

E-Government Act

FSIS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the Internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of E.O. 13175, "Consultation and Coordination with Indian Tribal Governments." E.O. 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed

legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

FSIS has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under E.O. 13175. If a Tribe requests consultation, FSIS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How to File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed

online at:

http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf, or write a letter signed by you or your authorized representative. Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail:

U.S. Department of Agriculture
Director, Office of Adjudication
1400 Independence Avenue, SW
Washington, DC 20250-9410

Fax: (202) 690-7442

E-mail: program.intake@usda.gov

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS Web page located at: <http://www.fsis.usda.gov/federal-register>.

FSIS also will make copies of this publication available through the FSIS *Constituent Update*, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types

of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS Web page. Through the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: <http://www.fsis.usda.gov/subscribe>. Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

List of Subjects

9 CFR Part 317

Food labeling, Food packaging, Meat inspection, Nutrition, Reporting and recordkeeping requirements.

9 CFR Part 381

Administrative practice and procedure, Animal diseases, Crime, Exports, Food grades and standards, Food labeling, Food packaging, Government employees, Grant programs-agriculture, Intergovernmental relations, Laboratories, Meat inspection, Nutrition, Polychlorinated biphenyls (PCB's), Poultry and poultry products, Reporting and recordkeeping requirements, Seizures and forfeitures, Signs and symbols, Technical assistance, Transportation.

For the reasons set out in the preamble, FSIS is proposing to amend 9 CFR parts 317 and 381 as follows:

PART 317 – LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for part 317 continues to read as follows:

Authority: 21 U.S.C. 601-695; 7 CFR 2.18, 2.53.

§ 317.2 [Amended]

2. In § 317.2:

- a. Paragraph (h)(4) is amended by removing the phrase
“except as provided for in paragraph (h)(5) of this section for random weight packages; a declaration of 1 ½ pounds avoirdupois weight shall be expressed as ‘Net Wt. 24 oz. (1 lb. 8 oz.),’ ‘Net Wt. 24 oz. (1 ½ lb.),’ or ‘Net Wt. 24 oz. (1.5lbs).’”;
- b. Paragraph (h)(5) is removed and reserved.
- c. Paragraph (h)(9)(i) is amended by removing the phrase “, dual declaration,” from the second and fourth sentences;
- d. Paragraph (h)(9)(iii) is amended by removing the phrase
“, dual declaration,”;
- e. Paragraphs (h)(9)(iv) and (v) are amended by removing the word “paragraphs” and adding in its place “paragraph” and removing the phrase “and (5)”;

- f. Paragraph (h) (9) (v) is further amended by removing the phrase “, and that the statement be expressed both in ounces and in pounds,”; and
- g. Paragraph (h) (12) is amended by removing the phrase “, except that such declaration of total quantity need not be followed by an additional parenthetical declaration in terms of the largest whole units and subdivisions thereof, as required by paragraph (h) (5) of this section”.

PART 381 – POULTRY PRODUCTS INSPECTION REGULATIONS

- 3. The authority citation for part 381 is revised to read as follows:

Authority: 7 U.S.C. 138f, 1633; 21 U.S.C. 451-472; 7 CFR 2.7, 2.18, 2.53.

- 4. In § 381.121:

- a. Paragraph (c) (5) is revised;
- b. The first sentence in paragraph (c) (8) is amended by removing “, except that such declaration of total quantity need not be followed by an additional parenthetical declaration in terms of the largest whole units and subdivisions thereof, as otherwise required by this paragraph (c)”;

c. Paragraph (c)(9)(i) is amended by removing the phrase ", dual declaration," from the second and fourth sentences; and

d. Paragraph (c)(9)(iii) is amended by removing the phrase ", dual declaration,".

The revision reads as follows:

§ 381.121 Quantity of contents.

* * * * *

(c) * * *

(5) The terms "net weight" or "net wt." shall be used when stating the net quantity of contents in terms of weight, and the term "net contents" or "contents" when stating the net quantity of contents in terms of fluid measure. Except as provided in § 381.128, the statement shall be expressed in terms of avoirdupois weight or liquid measure. Where no general consumer usage to the contrary exists, the statement shall be in terms of liquid measure, if the product is liquid, or in terms of weight if the product is solid, semi-solid, viscous, or a mixture of solid and liquid.

* * * * *

Done in Washington, DC.

Carmen M. Rottenberg,
Administrator.

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